



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF G-D-K-

DATE: OCT. 23, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a foodborne pathogen researcher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief asserting that he is eligible for a national interest waiver under the *Dhanasar* framework.

Upon *de novo* review, we will sustain the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.¹ *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met. *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.³ The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was a postdoctoral research associate in the Department of Plant Science and Landscape Architecture at the University of [REDACTED]. In June 2018, the Petitioner accepted a position as an Assistant Professor of Food Safety Microbiology at the University of [REDACTED].⁴ For the reasons discussed below, we find the Petitioner has established eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicated that he intends to continue his research aimed at ensuring a healthy food system and sustainable crop production methods. He further explained that his proposed work relates to “understanding foodborne pathogen survival in the environment, internalization in produce, and resistance to sanitizers.” In addition, the record includes information from the [REDACTED] at the University of [REDACTED] stating that the Petitioner’s proposed research focuses on improving “the microbiological safety of produce commodities,” understanding “bacterial persistence in processing and agricultural environments,” developing “antimicrobial alternatives to chlorine,” and analyzing “bacterial stress response to sanitizers.” The record also contains articles about the challenges presented by foodborne illness, the benefits of effective food safety practices, and the high costs associated with food recalls in the United States. Accordingly, the information and evidence shows that Petitioner’s proposed research relating to foodborne pathogens has substantial merit.

To satisfy the national importance requirement, the Petitioner must demonstrate the “potential prospective impact” of his work. The record includes letters of support discussing how the Petitioner’s proposed work stands to advance development of improved methods for eliminating foodborne pathogens and preventing bacterial contamination in the food industry. For instance, [REDACTED] Vice President of Scientific and Regulatory Affairs at the [REDACTED] [REDACTED] stated that the Petitioner’s research “discoveries improve food safety in the United States” and “prevent outbreaks of food-borne pathogens, protecting American health and businesses.” Similarly, [REDACTED] a research microbiologist with the [REDACTED] and

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ The Petitioner received a Ph.D. in food science and technology from [REDACTED] in 2011.

⁴ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we consider information about his positions to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* framework.

[redacted] at the U.S. Food and Drug Administration (FDA), asserted that the Petitioner's work advances "agricultural practices to improve food safety and protect the health of U.S. citizens. His research also increases the profitability of the produce industry by improving the control of the microbiological quality of the produce and preventing outbreaks of foodborne diseases and recalls." Furthermore, the Petitioner has submitted documentation indicating that the benefit of his proposed research has broader implications for the field, as the results are disseminated to others in the field through scientific journals and conferences. As the Petitioner has documented both the substantial merit and national importance of his proposed research, we agree with the Director's finding that the Petitioner meets the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The record includes his curriculum vitae, academic records, invention disclosures, published and presented work, and documentation of articles that cited to his research findings. In addition, the Petitioner offered letters from a wide variety of industry experts describing his expertise in foodborne pathogen research and his past record of success in that field.

We find that the Petitioner's past experience renders him well positioned to advance his proposed endeavor. Numerous expert references identify specific examples of how the Petitioner's [redacted] research has impacted his field and the produce industry. For example, [redacted] a consumer safety officer at the FDA, indicated that the Petitioner's work confirmed that "foodborne pathogens such as [redacted] can attach to dust and be transferred to produce surfaces." [redacted] asserted that this "discovery is of particular interest to FDA as it demonstrates the need to consider dust in conducting foodborne pathogen risk assessments of growing operations, and FDA is currently integrating these findings into the development of new guidance federal documents to help produce growers . . . reduce the potential for contamination." Likewise, [redacted] a food microbiologist with the FDA, stated that the Petitioner's findings "have been utilized by [FDA] to improve protection protocols for [redacted] and better understand [redacted] stress response and survival in low moisture foods. [The Petitioner's] research has had a direct impact on the FDA's ability to detect foodborne pathogens"

In addition, [redacted] Senior Microbiologist at [redacted] discussed the Petitioner's research showing that [redacted] can assume different phenotypic states in response to stress, stating: "His research is of great value to companies such as [redacted] developing and optimizing detection assays for foodborne pathogens as current traditional methods cannot detect these phenotypes which [the Petitioner] has demonstrated to be important." Similarly, [redacted] a researcher at the University of [redacted] Agricultural Center, indicated that the Petitioner "identified ways that [redacted] avoids detection and destruction to contaminate food supplies" and that she uses his "findings to advise [redacted] growers on methods for sample collection and water testing that can detect these alternative [redacted] morphologies."

Furthermore, [redacted] Technical Services Manager at [redacted] a certified organic grower with farming operations in four states, asserted that the Petitioner "developed a produce sanitization method composed of [redacted] that have demonstrated antimicrobial efficiency against foodborne pathogens." [redacted] noted that this "method efficiently sanitizes

produce without the use of conventional chlorine washes that generate byproducts with carcinogenic effects” and that “farms such as ours are able to use [the Petitioner’s] work to ensure the safety of their produce.” Moreover, [redacted] Senior Licensing Manager for [redacted] indicated that his organization is working towards “establishing a company to sell the [redacted] produce washes developed by [the Petitioner]. Our plans to commercialize [the Petitioner’s] research demonstrates its importance to the field”⁵

Finally, [redacted] professor of horticulture at [redacted] University, stated that the Petitioner’s “record of impactful publications and presentations that have enabled growers to better conduct risk assessments and prevent contamination of their produce by foodborne pathogens demonstrates that he has made significant achievements in the field.” As supporting documentation regarding the significance of his work, the Petitioner provided citation evidence showing that his findings have been cited by independent researchers in their published work. This documentation further corroborates that the Petitioner is well positioned to advance his proposed research in the United States.

The Petitioner’s experience and expertise in his field, published and presented work, citation evidence, record of success contributing to various research projects, inventions, and progress in foodborne pathogen research position him well to advance his proposed endeavor. Accordingly, we find that he satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver’s Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. As a food science researcher, the Petitioner possesses considerable experience and expertise in foodborne pathology. The record also demonstrates the widespread benefits associated with research progress towards ensuring a healthy food system and sustainable crop production methods. In addition, the Petitioner has documented his past successes in advancing research relating to understanding bacterial contamination of produce and developing effective sanitization methods. Based on the Petitioner’s track record of successful research and the significance of his proposed work to advance U.S. agricultural and food industry interests, we find that he offers contributions of such value that, on balance, they would benefit the United States even assuming that other qualified U.S. workers are available.

III. CONCLUSION

The Petitioner has met the requisite three prongs set forth in the *Dhanasar* analytical framework. We find that he has established he is eligible for and otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is sustained.

Cite as *Matter of G-D-K-*, ID# 4698526 (AAO Oct. 23, 2019)

⁵ The record includes documentation of three invention disclosures authored by the Petitioner.